



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 17, 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-16

Joseph E. Sandler
Sandler, Reiff & Young, P.C.
50 E Street S.E.
Suite 300
Washington, DC 20003

Dear Mr. Sandler:

This responds to your letter dated September 28, 2001, as supplemented by your letters dated October 25 and 23, on behalf of the Democratic National Committee ("DNC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the DNC's proposed schedule for making allocation transfers from its non-federal accounts to its Federal accounts on dates that would exceed the 60 day period prescribed in Commission regulations.

The request explains that the DNC transfer proposal stems from the national emergency that ensued after the tragic events of September 11. The national emergency "made it appropriate for the DNC to suspend its fundraising events and mail solicitations" after that date. Transfers from non-federal DNC accounts to its Federal accounts would cover the allocable expenses of various activities conducted by the DNC for both Federal and non-federal election purposes that are subject to allocation between its Federal and non-federal accounts. *See* Commission regulations at 11 CFR 106.5(a), 106.5(b), 106.5(f), and 106.5(g). Among other requirements, these regulations prescribe a 60 day period, beginning once an allocable expenditure is made, during which transfers related to the non-federal portion of each designated (and allocable) expenditure must be made. 11 CFR 106.5(g)(2)(ii)(B).¹ Your request indicates that the proposed delay in

¹ The cited allocation regulations also provide that, for certain expenditures, an advance transfer is permitted 10 days prior to the actual expenditure if a reasonable estimate of the final cost can be made. 11 CFR 106.5(g)(2)(i). In addition, special time schedules and procedures are prescribed for transfers resulting from adjustments in the "direct costs of fundraising" that qualify for allocation. 11 CFR 106.5(a)(2)(ii), 106.5(f)(2). The application of these provisions is not fully discussed in this opinion.

DNC transfers would occur during a period that started on or about August 27, 2001, and would end on April 30, 2002.

The request further describes the circumstances underlying the proposed time periods for future DNC transfers from its non-federal to its Federal accounts:

In the aftermath of the events of September 11, the DNC immediately suspended significant aspects of its fundraising operations. This action was taken out of respect for the victims of this enormous tragedy and to ensure that no element of partisanship be permitted to undermine or detract from the strong unified bipartisan support for President Bush in his leadership of the nation's response to this unprecedented challenge.

While it is possible that fundraising activities may be resumed on a limited basis in the coming weeks, in view of the elections still scheduled for 2001 and other factors, it is impossible to determine in the present circumstances which activities will be deemed appropriate if any. In any event, any such activities would necessarily be greatly reduced in scale and frequency in view of the need for the attention and energies of all elected officials and political leaders to be focused on the tasks and challenges at hand.²

In these circumstances, it will likely continue to prove extremely difficult for the DNC to raise funds of all kinds, in particular, non-federal funds, for the foreseeable future.

The request also asserts that the "current situation is truly one in which sufficient amounts of non-federal monies are not being received by the DNC in time to make allocation transfers because of circumstances outside the control of the committee or its agents." [Internal quotation marks omitted.]

Given the circumstances described, the DNC requests permission from the Commission to extend the 60 day window cited in 11 CFR 106.5(g)(2)(ii)(B) to one hundred twenty (120) days, for allocable expenditures made from August 27, 2001, through and including December 31, 2001. The effect of such an extension would be that transfers designated for allocable expenditures within this period could be made presently and continue, subject to a rolling 120 day window, until no later than April 30, 2002.

As a result of the issues raised in this advisory opinion request, the Commission considered granting some temporary and circumscribed relief from compliance with the transfer deadline set forth in 11 CFR 106.5(g)(2)(ii)(B) through a Statement of Policy. See 2 U.S.C. §437c(b)(1) [Commission has duty to administer, seek to obtain compliance with, and formulate policy with respect to, the Act]. The Commission

² Quoting a named DNC official, it was reported in *The Washington Times* of October 2, 2001, that the DNC had resumed some fundraising, with an event scheduled for October 1, and other events planned in the days and weeks ahead. In addition, *The New York Times* of October 11 reported that, during the first week of October, the DNC distributed its first mailed solicitation since September 11.

considered but failed to approve by a vote of 3-3, such a Statement of Policy. See, Agenda Document No. 01-61, Commission meeting of November 29, 2001, and a published Notice titled: *Request for Comment on Draft Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for Payment of Allocable Expenses*, 66 *Fed. Reg.* 56247 (November 7, 2001). Likewise, the Commission has determined not to grant the requested relief from the transfer deadline through an advisory opinion.

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely,

(signed)

David M. Mason
Vice Chairman